IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9951 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMAL KODUMAL HEMNANI & 2 - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR SK JHAVERI for Applicant(s) : 1 – 3.
MR PY DIVYESHVAR for Applicant(s) : 1 – 3.
MS JIRGA D JHAVERI for Applicant(s) : 1 - 3.
MRS ML SHAH APP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 18/01/2006

ORAL JUDGMENT

1.Rule. Learned APP Mrs. M.L.Shah waives service

of notice of rule on behalf of the respondents. With the consent of the parties, the petition is taken up for final hearing today.

2. By filing this petition under Section 482 of the Code of Criminal Procedure, the petitioners who are original accused Nos.3,4 and 5 of Criminal Case No.1103 of 2003, have prayed that the proceeding against the petitioners may be quashed as the petitioners have not played any role in connection with the offence alleged to have been committed by the Company under the Food Adulteration Act, 1954 (the Act).

3. Mr. Nayak has frankly submitted that he is not pressing this petition so far as petitioner No.1 is concerned with a liberty to raise all the points in the pending trial. Since Mr. Nayak is withdrawing this petition so far as peitioner No.1 is concerned, it is not necessary to examine whether he had played any role or responsible for the alleged offence. As and when such point is raised, the trial Court

shall consider the same as per the evidence on record and in accordance with the law. In view of above, Rule qua petitioner No.1 is discharged.

4.The aforesaid complaint is filed by one Mr. C.M.Nayak, Food Inspector, resorting to the provisions of the Act. In the aforesaid complaint, one Mr. Chandrakant Budhabhai is shown as accused No.1, the company namely Primlaks Waffles Pvt. Ltd. is shown as accused No.2 and so far as petitioners Nos.2 and 3 are concerned, they have been shown as accused Nos.4 and 5 respectively. As per the allegations made in the complaint, the complainant at the time of inspection of the premises of the company on 18-10-2002 found the accused No.1 selling creamy waffers namely pickwick of different flavours. The complainant took out one cartoon of such creamy waffers and sent it for analysis to the Public Analyst. After receiving the report showing the same as

adulterated one, the Food Inspector lodged the aforesaid complaint before the learned Judicial Magistrate, First Class, Ahmedabad and the learned Magistrate issued process under the provisions of the Food Adulteration Act.

5. Being aggrieved by the aforesaid order, the petitioners have approached this Court.

6. Learned advocate Mr. Nayak has submitted that both the petitioners Nos.2 and 3 were not looking after the affairs of the company and they have shifted to Brazil since 2000. Mr. Nayak further submitted that the company had already given particulars of Directors of the Company etc. to the Food Inspector at the relevant time when such information was sought for and the Food Inspector was informed that Mr. Kamal Kodumal Hemnani, Mr. Anand Arjan Hemnani and Mr. Ajay Arjan Hemnani are the directors of the company, but at the bottom of the letter it is stated that Mr. Madhav M. Damle is Alternate Director

to Mr. Anand Arjan Hemnani. Copy of the said letter dated 25-1-2003 is at annexure “G” collectively to this petition. Basing his arguments on the aforesaid letter, Mr. Nayak has vehemently submitted that so far as Anand Arjan Hemanani, who is one of the petitioners is concerned, he has already shifted to Brazil and he was not even managing day-to-day affairs of the company, and therefore, an alternate director was appointed in his place. The said fact is not disputed by the Food Inspector who is present in the Court and assisted learned APP Mrs. M.L.Shah. It is required to be seen that as per the said letter page 14, the petitioner Ajay Arjan Hemnani is also shown to be residing at Brazil. It is not in dispute that the aforesaid two directors had already shifted to Brazil and even in the complaint there is no averment that they were also associated with the business actively or they were taking active part in the business. The

aforesaid two directors were neither Managing Directors nor any specific role is attributed to them in the complaint.

7. Mr. Nayak has relied upon certain decisions of Hon'ble Supreme Court in support of his case that unless it is shown that a director was taking active part in the management or responsible for the management of the company, he cannot be subjected to criminal proceeding simply because he is director of the firm. It is required to be noted that so far as aforesaid two directors are concerned, since it is not in dispute that they have shifted to Brazil since long, it can be reasonably inferred that they had no role to play so far as manufacturing activity of the company is concerned.

8. Mr. Nayak has further submitted that at the relevant time, the affairs of the company were managed by one Mr. Vinayak Bapusaheb Bokil. Mr. Nayak has however frankly submitted that a

resolution is passed in the meeting in the year 2000 and unfortunately such information was not sent to local health authority. However, so far as the above contention is concerned, the Court is not require to express any opinion. Since both the petitioners i.e. petitioner No.2 and 3 were not residing in India at the relevant point of time, the petition is required to be allowed.

9. Learned APP Mrs. M.L.Shah has however submitted that there is no nomination in the instant case and according to her, as per the scheme of the Act, if there is no nomination, the company and its directors can be proceeded.

10. It is however clarified that during the stage of trial, at any point of time, if the Court finds that the aforesaid two petitioners i.e. petitioner No.2 and 3 have played any role, the Court can proceed against them as per the provisions of Section 319 of the Code of Criminal Procedure and this order would not

come in the way of prosecuting agency. The said option is therefore, kept open for the prosecution to request the Court to implicate and proceed against any of the aforesaid petitioners in whose favour the present order is passed and is kept open for the consideration of the learned Magistrate. Mr. Nayak has fairly stated that in law it is always open for the prosecution to request in this behalf as per the provisions of Section 319 of Code of Criminal procedure and it is for the concerned Magistrate to find out as to who is responsible for commission of offence by considering the evidence on record.

11. In view of what is stated hereinabove, the petition qua petitioners No.2 and 3 is allowed and the complaint qua petitioners Nos.2 and 3 is quashed. It is however,clarified that during the course of the trial or at any stage, if ultimately from the evidence it is found that a person who is not an accused in the case is

found guilty for commission of an offence, the Court can proceed against such person for committing an offence. So far as present petitioners are concerned, it is clarified that if ultimately it appears from the evidence that they have played any role, the Court can proceed against them at a later point of time by summoning them again and this order, therefore, would not come in the way for proceeding in the aforesaid manner and the Trial Court is at liberty to exercise powers under Section 319 of the Code of Criminal Procedure if any exigency arises in that behalf. Rule is made absolute to the aforesaid extent so far petitioners Nos.2 and 3 are concerned.

(P.B.MAJMUDAR,J.)

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